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C.R.P.(PD)No.4571 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.11.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4571 of 2024
and C.M.P.No.25436 of 2024

K.Ayyavoo

.. Petitioner

Vs

D.Kavitha

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 24.09.2024 made in I.A.No.1 of 2024 in C.O.S.No.2 of 2024 on the file of the learned District Judge, Commercial Court, Salem.

For Petitioner : Ms.K.Dhivyashree

ORDER

This civil revision petition challenges the order passed by the learned District Judge, Commercial Court at Salem in I.A.No.1 of 2024 in C.O.S.No.2 of 2024.

2. C.O.S.No.2 of 2024 is a suit seeking for recovery of a sum of



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Rs.40,17,429/- together with interest at the rate of 18% per annum on the principal sum of Rs.27,15,686/- together with costs.

3. The civil revision petitioner is the defendant in the suit. The case of the plaintiff is that she is a manufacturer of metallic yarn. She had supplied materials on credit basis to the defendant so as to enable the defendant to manufacture textiles utilising the yarn so supplied. The plaintiff admits that the defendant had made a part payment on 05.10.2021, but defaulted thereafter. Her demand on the defendant by way of a lawyer's notice on 12.02.2024 was not positively responded to, by the defendant. The defendant had taken a stand by way of a reply notice on 29.02.2024 that the yarn that had been supplied by the plaintiff to the defendant was of inferior quality and that he had suffered loss of Rs.50,00,000/- due to the low quality of the yarn. The defendant requested that the metallic yarn supplied by the plaintiff had damaged 500 power looms that have been utilised by the defendant to manufacture textiles.

4. Being left with no other option, the plaintiff presented the



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aforesaid suit. The defendant filed a written statement taking more or less the same plea as he had done in the reply notice. Issues were framed and the matter is now pending for trial.

5. At that stage, the defendant took out an application in I.A.No.1 of 2024 seeking for appointment of a Commissioner to visit the defendant's property to note down the stocks of yarn that had been supplied by the plaintiff and to ascertain the quality of the metallic yarn with the assistance of an engineer, and note down the inferior quality of the goods, and the stock worth Rs.40 lakhs, and to calculate the inferior metallic yarn in kilograms, and to check whether they are good or bad, and to file a report.

6. To this petition, the plaintiff filed a detailed counter. She countered the allegations stating that a Commissioner's visit is unnecessary and that a Commissioner cannot give a finding whether the stock available with the defendant is the stock supplied by the plaintiff. She further pleaded that the entire idea of the defendant is to drag on the matter and thereby deny the plaintiff the fruits of the litigation.

7. The learned District Judge, Commercial Court at Salem, after



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going through the records, came to a conclusion that the defendant is trying to collect evidence in support of his case by seeking for appointment of a Commissioner. Having come to this conclusion, the learned Judge dismissed the application. Hence, this revision.

8. I heard Ms.K.Dhivyashree for the civil revision petitioner.

9. Ms.K.Dhivyashree, in addition to the reiteration of the submissions made by her counter part in the Court below, argued that the Court is empowered, in terms of Order XXVI Rule 10A of the Code of Civil Procedure to appoint a Commissioner, as it involves the scientific investigation as regards the quality of the yarn. She pleads that whether the yarn supplied by the plaintiff is of the appropriate quality, as demanded by the defendant is a matter in issue. Hence, she seeks for revision of the said order.

10. I have carefully considered the submissions of Ms.K.Dhivyashree. I have perused the entire records.

11. The supply of the yarn made by the plaintiff to the defendant is



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not in dispute. The dispute that the defendant has raised, after the supply has been made, is that the quality of the yarn is substandard. On a question asked by the Court, whether the defendant had issued any notice soon after the supplies had been made, pointing out to the plaintiff that the yarn was defective, Ms.K.Dhivyashree states, a communication was issued and that it was not in writing but an oral one. She added that the plaintiff had sent her representative to the factory of the defendant and the representative had admitted to the defective supply and had assured that he would take return of the material supply. She also points out that 500 power looms of the defendant had been damaged on account of the defective yarn.

12. The office of a Commissioner can be utilised for scientific investigation. That would arise in a situation where the defendant, who has let in some evidence before the Court, to substantiate his plea that the supplies were defective. As on today, the material that is available before the Court is that the supply had been received and consumed by the defendant, which allegedly damaged his power looms. There is no evidence before the Court to show that the materials were substandard or the fact that the power looms had, in fact, been damaged on account of



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such supply.

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13. For the purpose of invocation of Order XXVI Rule 10A of the Code, in the facts of this case, it is the duty of the defendant to let in some evidence on the defective nature of the supply. At this stage, Ms.K.Dhivyashree points out that the defendant has, in fact, taken steps by requesting the Senior Chemist, Regional Testing Laboratory, Department of Industries & Commerce, Salem-1 to give a report as regards certain metallic paper roles. On receipt of this report, it is always open to the defendant to produce the same before the Court.

14. I should point out that, in terms of Order XI Rule 1(10) of the Code of Civil Procedure as amended by the Commercial Courts Act, the defendant is always entitled to produce the documents, which are not in his power, possession, control or custody at the time of completion of the pleadings. The report of the Regional Testing Laboratory, Department of Industries & Commerce is obviously not under the control of the defendant. Hence, on filing an appropriate application seeking leave of the Court to produce the report of the Regional Testing Laboratory, I am sure the Trial Court would permit the defendant to bring on record the



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said evidence.

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15. After a perusal of the evidence that is available before it, if the Court is of the opinion that Order XXVI Rule 10A of the Code has to be invoked, then it is for the Court to take a call at that stage. Suffice to state, as no records are available before the Court as on today, I do not find any reason to take a different view than the one taken by the learned Commercial Judge.

16. In the light of the above discussions, the civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.11.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

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To

The District Judge, Commercial Court, Salem.

V. LAKSHMINARAYANAN,J.



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